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TO UN SECURITY COUNCIL COLLECTIVE IMMEDIATE
INFO MARITIME SECURITY COLLECTIVE IMMEDIATE
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C O N F I D E N T I A L SECTION 01 OF 04 STATE 047531

SIPDIS

E.O. 12958: DECL: 05/02/2018

TAGS: [PREL](#) [PHUM](#) [PHSA](#) [EWWT](#) [KCRM](#) [UNSC](#) [SO](#) [XW](#)
SUBJECT: UNSC RESOLUTION ON SOMALI PIRACY

Classified By: IO A/S Kristen Silverberg,
Reasons 1.4 (b) and (d).

¶1. (C) This is an action request. Posts are requested to approach host governments to explain the basis for the draft Security Council resolution on piracy off the coast of Somalia and seek their support. As consultations on the draft resolution are already underway in New York among Security Council members, posts are requested to complete their action by May 6 in order to maximize the impact on these negotiations. See paragraphs 4 and 5 below. End action request.

¶2. (C) BACKGROUND: Over the last few years there has been a sharp increase in incidents of piracy off the Somali coast. According to the International Chamber of Commerce's (ICC) International Maritime Bureau (IMB) acts of piracy off the Somali coast increased from 2 in 2004 to 31 in 2007 (only 10 in 2006). The Transitional Federal Government (TFG) does not have the capacity to protect vessels off its coasts or to interdict pirates and perpetrators of vessel hijackings in Somali territorial waters. The TFG has granted the USG and other countries permission to enter Somali waters to protect shipping lanes and interdict pirates. Some states view a request for assistance from the TFG as sufficient legal basis to conduct operations in Somali territorial waters. However, given the TFG's temporary nature and its lack of recognition among some nations, other states believe further international legal authority is required or desirable to conduct operations in Somali territorial waters.

¶3. (C) On April 28, 2008, the US, UK, France and Panama circulated a draft Security Council resolution to address acts of piracy and armed robbery at sea off of the coast of Somalia to Council members. The draft resolution would provide authorization under Chapter VII of the U.N. Charter for states "cooperating with the Transitional Federal Government (TFG) of Somalia" to enter the territorial sea of Somalia to conduct counter-piracy and armed robbery operations. The draft resolution also calls upon states to assist in the disposition of apprehended suspects. For posts' background only, the text of the resolution as of the April 28 draft is included in para 6 below.

¶4. (C) In preliminary discussions in New York, some delegations expressed concern about the consistency of the resolution with the U.N. Convention on the Law of the Sea (UNCLOS) and the extent to which the resolution should reflect TFG consent to the activities authorized under it. We want to address these points with the governments of Security Council members and request that they provide appropriate instructions to their UN missions to support the current draft resolution. China, Indonesia and South Africa at this point question the need for a Chapter VII resolution, and they may sway other Security Council members to do likewise. Some members did not have instructions from capital last week because of national holidays. The next round of consultations are scheduled for May 8 this week, so

posts may have an opportunity to shape the instructions that capitals will provide for this Thursday's discussions. Posts are requested to engage with host governments at the level appropriate to influence those instructions to be provided by capitals. End background.

15. (SBU) Posts may draw on the following talking points (which may also be left as a non-paper) in consulting with host nation governments:

-- The United States remains deeply concerned about acts of piracy and armed robbery at sea occurring in territorial and international waters off the coast of Somalia. The recent incidents involving the French-flagged Le Ponant, the Spanish fishing vessel Playa de Bakio and the Japanese oil tanker Takayama, suggest that pirates and armed robbers will be increasingly bold in their targets and tactics.

-- Their operations are conducted at increasingly greater distances from the coast, in some cases out to 200 miles, and their weaponry has more prominently featured rocket propelled grenades and semi-automatic weapons. Without further action, the loss of life, hijacking of ships, and kidnapping of innocent crewmembers will only escalate. The recent incidents have demonstrated the grave threat that pirates and armed robbers pose to the safety of commercial maritime routes and to international navigation as a whole.

-- The TFG, acknowledging its inability to address this

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situation, requested assistance and granted the USG and other countries permission to enter Somali waters to protect shipping lanes and interdict pirates. Given the TFG's temporary nature and its lack of recognition among some nations, some states believe further international legal authority is required to conduct operations in Somali territorial waters.

-- For this reason, on February 27 the Transitional Federal Government (TFG) of Somalia requested the Security Council to assist the TFG and other cooperating states in addressing piracy in the waters off the coast of Somalia. The United States conducted consultations with the TFG and with Security Council members on ways to address this request. We also coordinated with the International Maritime Organization on its efforts to develop a regional approach and through our Embassies canvassed countries throughout the world on the manner in which the Security Council could assist.

-- Following consultations with the Somali mission at the UN, on April 28, Panama, France, the UK and the UN circulated a draft resolution designed to meet the TFG's request.

-- The USG believes that the resolution is properly framed to respond to the TFG request for assistance in a way that respects the territorial integrity and sovereignty of Somalia.

-- A Security Council resolution adopted under Chapter VII of the UN Charter would provide a clear legal basis under international law to enter into Somalia's territorial sea for the purposes of conducting counter-piracy operations and to carry out those operations, notwithstanding concerns some states may have about the ability of the TFG to provide consent under the international law of the sea.

-- As a Chapter VII measure, nothing authorized by the resolution would violate the UN Convention on the Law of the Sea (UNCLOS).

-- Authorization under the resolution is limited in scope to the territorial sea of Somalia. It is not an authorization to conduct activities in the territorial seas of other countries nor does it enlarge the rights and responsibilities of states in international waters.

-- The USG agrees that it is important to have TFG consent to provide a sound political basis for the resolution and the resolution would make clear that the Security Council is adopting this resolution in response to the request of the TFG. Importantly, that action would be authorized under the resolution only if the States undertaking it are cooperating with the TFG.

(If needed:)

-- The USG believes there are sound reasons for not including an explicit requirement for TFG "consent" or "authorization" in the resolution

-- The underlying need for the resolution is created in the first place by the fact that, in view of the unsettled situation in Somalia, some states do not consider the TFG capable (as a legal matter) of providing consent or authorization. To insert a requirement for consent or authorization would therefore re-introduce the problem that the resolution is designed to remove in the first place.

-- As a practical matter, and also as a result of the unsettled situation, the TFG lacks the practical capacity for providing consent or authorization in a timely way. Inserting a requirement for the TFG to provide such consent or authorization to enter Somali territorial seas or take action in a particular case or cases would work to protect fleeing pirates and armed robbers and thus undermine the overall objectives of the resolution to combat further attacks against ships off Somalia's coast.
End Points.

¶6. (U) Text of April 28 draft (posts should be aware that the resolution text is being negotiated actively in New York and is therefore subject to change; this draft of the text is included here solely for the background of post).

The Security Council,

PP1. Recalling its previous resolutions and the statements of its President concerning the situation in Somalia,

PP2. Deeply alarmed by the increasing number of acts of piracy and armed robbery against vessels and the grave threat

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that they pose to the safety of commercial maritime routes and to international navigation as a whole,

PP3. Expressing its concerns at reports from the International Maritime Organization (IMO) which provide evidence of continuing piracy and armed robbery in regions crucial to international navigation, including the western Indian Ocean region and the Gulf of Guinea,

PP4. Recalling the relevant provisions of international law with respect to the repression of piracy, including Article 100 of the United Nations Convention on the Law of the Sea, which provides for cooperation to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state,

PP5. Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia,

PP6. Deeply concerned at the continuing incidents of acts of piracy and armed robbery against vessels in territorial and international waters off the coast of Somalia, their serious adverse impact on the safe delivery of humanitarian assistance to the people of Somalia, and the grave dangers they pose to vessels, crews, passengers and cargo,

PP7. Deplored the hijacking of the Panamanian-flagged vessel "Fiesty Gas" on 10 April 2005 and "Golden Nori" on 28

October 2007 off the coast of Somalia, and more recently the hijacking of the French-flagged passenger ship "Le Ponant" on 4 April 2008, the hijacking of the Spanish fishing vessel "Playa de Bakio" on 20 April 2008, and the attempted hijacking of the Japanese oil tanker "Takayama" on 21 April 2008,

PP8. Noting the letters of the Secretary-General from the Secretary-General of the IMO dated 5 July 2007 and 18 September 2007 regarding the piracy problems off the coast of Somalia and the IMO Resolution A.1002(25), which strongly urged Governments to increase their efforts to prevent and suppress, within the provisions of international law, acts of piracy and armed robbery against vessels irrespective of where such acts occur, and recalling the joint communique of the IMO and the World Food Program of 10 July 2007,

PP9. Taking note of the Secretary-General's letter of 9 November 2007 to the President of the Security Council reporting that the Transitional Federal Government of Somalia (TFG) needs and would welcome international assistance to address the problem,

PP10. Taking further note of the letter from the Permanent Representative of the Somali Republic to the United Nations to the President of the Security Council dated 27 February 2008, conveying the request of the TFG to the Security Council for urgent assistance in securing the territorial and international waters off the coast of Somalia for the safe conduct of shipping and navigation,

P11. Determining that the continuing incidents of piracy and armed robbery against ships in the territorial and international waters off the coast of Somalia constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

¶1. Condemns and deplores all acts of piracy and armed robbery against vessels in territorial and international waters off the coast of Somalia;

¶2. Urges states whose naval vessels and military aircraft operate in international waters and airspace off the coast of Somalia to be vigilant to acts of piracy and armed robbery and, in this context, encourages in particular states interested in the use of commercial maritime routes off the coast of Somalia to increase their activities and coordination to deter acts of piracy and armed robbery at sea;

¶3. Urges all states to cooperate with each other, with the IMO and, as appropriate, with the relevant regional organizations in connection with, and share information about, acts of piracy and armed robbery in territorial and international waters off the coast of Somalia, and to render assistance to vessels threatened by or under attack by pirates or armed robbers, in accordance with relevant international law;

¶4. Further urges States to work in cooperation with interested organizations, including the IMO, to ensure that vessels entitled to fly their flag receive appropriate guidance and training on avoidance, evasion, and defensive

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techniques and to avoid the area wherever possible;

¶5. Calls upon States and interested organizations, including the IMO, to provide technical assistance to Somalia and nearby coastal States upon their request to enhance the capacity of these States to ensure coastal and maritime activity, including combating piracy and armed robbery off the Somali and nearby coastlines;

5bis. Affirms that the measures imposed by paragraph 5 of resolution 722 (1992) and further elaborated upon by

paragraphs 1 and 2 or resolution 1425 (2002) do not apply to supplies of technical assistance to Somalia solely for the purposes set out in paragraph 5 above, which have been exempted from those measures in accordance with the procedure set out in paragraphs 11(b) and 12 of resolution 1772 (2007);

¶6. Authorizes, for a period of six months, States cooperating with the TFG and which have notified the Secretary-General:

a) to enter the territorial waters of Somalia for the purposes of identifying and pursuing pirates and armed robbers and of deterring, preventing and suppressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law, and

b) to use, within the territorial waters of Somalia, in a manner consistent with action permitted on the high seas with respect to piracy under relevant international law, all necessary means to identify, deter, prevent, and repress acts of piracy and armed robbery, including but not limited to boarding, searching, and seizing vessels engaged in or suspected of engaging in acts of piracy or armed robbery, and to apprehend persons engaged in such acts with a view to such persons being prosecuted;

¶7. Calls upon States to coordinate their actions with other participating States taken pursuant to paragraphs 5 and 6 above;

¶8. Expresses its intention to review the situation and consider renewing the authority provided in paragraph 6 above for additional periods;

¶9. Calls upon all States, and in particular flag, port and coastal States and States of the nationality of the victims and perpetrators of piracy and armed robbery to provide disposition and logistics assistance for persons under their jurisdiction and control, such as victims, witnesses, and suspected pirates and robbers who are detained as a result of piracy repression operations;

¶10. Urges relevant States to cooperate in determining jurisdiction in order to ensure the detention, investigation, and prosecution of persons responsible for acts of piracy and armed robbery consistent with applicable international law including international human rights law, and urges all States to render assistance to such efforts such as by providing investigative, logistical and disposition assistance;

¶11. Requests relevant States to keep the Security Council regularly informed of the progress of actions undertaken in the exercise of the authority provided in paragraph 6 above;

¶12. Requests the Secretary-General to report to the Security Council within three months of adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery in territorial and international waters off the coast of Somalia, and further requests the Secretary-General to report within six months on the possibility of extending the measures provided by the present resolution to other areas affected by piracy;

¶13. Decides to remain seized of the matter.

RICE